

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
 : Docket #16mj2541
UNITED STATES OF AMERICA, : 1:16-mj-02451-UA
 :
Plaintiff, :
 :
- against - :
 :
ALEX LICHTENSTEIN, : New York, New York
 : April 18, 2016
 :
Defendant. :
 :
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PROCEEDINGS BEFORE
THE HONORABLE HENRY PITMAN
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: UNITED STATES ATTORNEY'S OFFICE
SOUTHERN DISTRICT OF NEW YORK
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: United States against Alex
Lichtenstein. Counsel, please state your name for the
record.

MR. KAN NAWADAY: Good afternoon, Your Honor, Kan
Nawaday, Martin Bell and Russell Capone Neff for the
government. Joining us is Special Agent Joseph Downs of
the FBI.

MR. RICHARD A. FINKEL: Good afternoon, Your
Honor, Richard A. Finkel of 270 Madison Avenue for the
defendant.

THE COURT: Okay, thank you. All right, one
preliminary matter, all attorneys in well of the court who
have a cell phone are directed to turn the cell phone off
at this time. Don't put it on vibrate, don't put it on
silent, but you are directed to turn it off so that we can
all give our undivided attention to the matter at hand.

Okay, Mr. Lichtenstein, my name is Magistrate
Judge Pitman, the purpose of this proceeding is to inform
you of certain rights that you have, to inform you of the
charges against you, to consider whether counsel should be
appointed for you, and to decided under what conditions, if
any, you should be released. Can I have the date and time
of arrest, please?

MR. NAWADAY: The defendant was arrested at

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2 approximately 9:30 a.m. yesterday, he was transported down
3 to the Metropolitan Corrections Center and appears before
4 Your Honor today.

5 THE COURT: Okay, thank you. Mr. Lichtenstein,
6 you have the right to remain silent. You are not required
7 to make any statements. Even if you have made any
8 statements to the authorities you need not make any further
9 statements. Anything that you do say can be used against
10 you. You have the right to be released either
11 conditionally or unconditionally pending trial unless I
12 find that there are no conditions or combination of
13 conditions that would reasonably assure your presence in
14 court and the safety of the community. You have the right
15 to be represented by counsel during all court proceedings
16 including this one, and during all questioning by the
17 authorities. If you cannot afford an attorney I will
18 appoint one to represent you. It is my understanding that
19 you're currently represented by retained counsel. I want to
20 advise you that the right to the appointment of counsel is
21 a right that you possess throughout these proceedings. If
22 at any time you're unable to continue with retained counsel
23 because you run out of money, you can apply to the Court at
24 any time for the appointment of counsel. Do you understand
25 that?

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THE DEFENDANT: Yes.

THE COURT: Okay, thank you. All right, Mr. Hampton, let me please ask you to place the complaint before Special Agent Downs. All right, Special Agent Downs, is that your signature on the complaint?

SPECIAL AGENT DOWNS: It is, Your Honor.

THE COURT: Okay, please raise your right hand. Do you swear that the statements in that complaint are true, so help you God?

SPECIAL AGENT DOWNS: I do.

THE COURT: Thank you, please be seated. Mr. Lichtenstein, you're charged in a complaint in two counts, count one charges you with violating Title 18, United States Code Section 666. In count one it's alleged that you offered bribes to members of the New York City Police Department in order to obtain gun licenses for individuals who had paid you fees. Count two charges you with violating Title 18 United States Code Section 371. That statute makes it a crime to conspire or to agree with others to violate the laws of the United States. In count two it's alleged that you conspired or agreed with others to commit the offense charged in count one, namely bribery. Mr. Finkel, have you received a copy of the complaint?

MR. FINKEL: I have, Your Honor.

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THE COURT: Have you reviewed it with your client?

MR. FINKEL: Briefly, yes, before this proceeding.

Yes, Your Honor.

THE COURT: Okay, and do you waive its reading?

MR. FINKEL: Yes, we waive the reading.

THE COURT: Thank you. Mr. Lichtenstein, you have the right to a preliminary hearing at which the government will have the burden of establishing that there is probable cause to believe that the crimes charged in the complaint have been committed and that you're the person who committed them. If probable cause is not established, you'll be released from the charges, if probable cause is established the government will then have the right to proceed to trial against you. If you're in custody you have the right to a preliminary hearing within 14 days, if you're not in custody you have the right to a preliminary hearing within 21 days; however, no preliminary hearing will be held if either the grand jury indicts you or if the government files an accusatory instrument called an information prior to the date set for the preliminary hearing. I'll set the preliminary hearing date after I determine bail. I will hear from the government first, then defense counsel.

MR. NAWADAY: Your Honor, the government seeks

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2 detention based on risk of flight and danger to the
3 community. Your Honor has a very detailed criminal
4 complaint before you. The defendant is charged with very,
5 very serious offenses and very serious conduct. He was no
6 less than an arms dealer for the communities of New York
7 City. He was obtaining through bribery, through unlawful
8 means, licenses for his clients to bear arms for guns that
9 should not have been, we allege, on the streets. On the
10 strength of the case, our strength is very strong, there's
11 a very detailed complaint before Your Honor, but just to
12 walk through some of those facts in the complaint. First
13 off, just last week this defendant was recorded trying to
14 bring an NYPD officer to obtain gun licenses for his
15 clients and offered \$6,000 per gun. He also bragged about
16 the fact that just in the last year through his connections
17 at the NYPD, the defendant had obtained 150 such licenses.
18 Now the danger attended to that conduct of using bribery
19 and unlawful means and connections with NYPD personnel to
20 (inaudible) favor, to get guns for his clients, can't be
21 overstated. We set forth in the complaint as an example
22 that there was at least one license for a gun that it
23 appears the defendant helped obtain, he, in fact, paid for
24 the license fee, where it looks like a license was obtained
25 for an individual who on its face appears should not have

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2 been given a license. And that individual is referred to
3 as license holder one in paragraph 16 of the complaint.
4 That license holder it appears had a history of domestic
5 violence and --

6 THE COURT: Well, I'm looking at the complaint. I
7 mean the complaint, I'm looking at paragraph 16(B), the
8 individual had been the subject of four domestic violence
9 complaints including one in which he was accused of
10 threatening to kill someone. Do we know what the
11 disposition of those complaints were?

12 MR. NAWADAY: We do not, Your Honor.

13 THE COURT: Okay.

14 MR. NAWADAY: So there's already --

15 THE COURT: Do we know, I'm sorry to interrupt
16 you, do we know if even a criminal proceeding was commenced
17 against license holder one as a result of the domestic
18 violence complaints?

19 MR. NAWADAY: As far as I know, we do not, Your
20 Honor, we are still investigating that.

21 THE COURT: All right. So, all right, go ahead.

22 MR. NAWADAY: So, Your Honor, the evidence is very
23 strong the defendant was engaging in dangerous conduct in
24 obtaining seemingly lawful gun licenses for people who
25 frankly we don't necessarily know and don't necessarily

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2 believe should have gotten gun licenses. In addition to
3 that, the defendant is facing serious time, there is a
4 maximum penalty of 10 years on count one, and we concede,
5 Your Honor, that the defendant has no criminal history and
6 by all appearances he has many connections to the
7 community. That said, the defendant does have a somewhat
8 significant net worth and could have the means of fleeing
9 in light of these serious charges that he faces.

10 THE COURT: All right, let me just ask you a few
11 questions. I mean to detain, we agree neither count is a
12 presumption count, agreed?

13 MR. NAWADAY: That's correct, Judge.

14 THE COURT: Okay. To detain an individual on the
15 grounds of dangerousness, the dangerousness needs to be
16 shown by clear and convincing evidence. Is there any
17 reason to believe that the licensees for whom Mr.
18 Lichtenstein allegedly obtained licenses have used the guns
19 illegally?

20 MR. NAWADAY: Not as I stand here now, Your Honor.

21 THE COURT: And let me ask Pretrial, let me ask
22 counsel and/or Pretrial, on page 2 of the Pretrial Services
23 report, in the box marked monthly income it indicates a
24 salary of \$80,000, is that monthly or is that annually?

25 MR. FINKEL: Annually, Your Honor.

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FEMALE VOICE: We believe annually, Your Honor.

THE COURT: Okay. Just I'm going to hear from you in one second, Mr. Finkel.

MR. FINKEL: Yes, Your Honor.

THE COURT: I've got a few more questions for the government. Why could not bail conditions be set to mitigate the risk of nonappearance, Mr. Nawaday?

MR. NAWADAY: Your Honor, I think our issue is the seriousness of the offense and the danger to the public.

THE COURT: I'm sorry, I just didn't hear what you said.

MR. NAWADAY: The danger to the public because in our view the defendant has been a danger to the public by expediting licenses through unlawful means which in all likelihood should not have been issued by the NYPD. So we understand that Your Honor might have a different view.

THE COURT: No, I mean my understanding is some individuals possess firearms and never use them, some possess firearms and use them for terrible, horrible things, some people just want them for I don't know what reason, but I'm trying to understand, you're making a dangerousness argument here and I'm trying to understand whether or not the individuals for whom the defendant allegedly obtained licenses have used them in a dangerous

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2 or illegal manner. Or maybe they're individuals who just
3 want them for the sake of possessing them, I don't know.
4 I'm trying to find out if there's some meat on your
5 dangerousness argument.

6 MR. NAWADAY: Your Honor, I think the response we
7 have is at the end of the day, because of what the
8 defendant did as we allege it, the NYPD wasn't able to make
9 and do the actual background investigations it should have
10 done. Because these licenses and these license
11 applications were sped along in a way they should not have
12 been sped along. That's our issue. And also when the
13 defendant was arrested he did have in his wallet what
14 appeared to be an NYPD liaison badge and as far as we are
15 aware he's not an NYPD liaison, that is document that he
16 should not have, and I think that also lends to the fact
17 that he would have that kind of document with him which
18 doesn't appear to be a valid document.

19 THE COURT: I understand that but how does that
20 support an inference of either dangerousness or risk of
21 nonappearance, that he had a bogus police badge?

22 MR. NAWADAY: Well, exactly, a bogus police badge
23 is like a fake ID, is always I think you can draw an
24 inference that somebody carries a fake ID and is willing to
25 carry a fake ID to show that he has a relationship with the

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2 police does bear a chance and a possibility of a risk of
3 flight. That person --

4 THE COURT: Well there's always a possibility of a
5 risk of flight. I mean I'm not sure how the bogus police
6 badge demonstrates a risk of nonappearance.

7 MR. NAWADAY: In our view it does because it shows
8 somebody who is willing and even by his conduct to use his
9 connection or the appearance of connections to law
10 enforcement in order to get what he wants. So that is I
11 think what the possession of the bogus NYPD badge shows.

12 THE COURT: All right, anything else you want to
13 tell me? No, Your Honor, but to the extent that Your Honor
14 is considering a bail package for the defendant, we would
15 request that there be, it be as stringent as possible that
16 there be property to secure his reappearance and also that
17 there be conditions limiting and precluding the defendant
18 from working to obtain gun and firearms permits for his
19 clients going forward. Or, in fact, speaking to them or
20 contact with the firearms division of the NYPD.

21 THE COURT: All right. Mr. Finkel.

22 MR. FINKEL: Yes, Your Honor, thank you. Your
23 Honor, may I start off by saying that we believe that the
24 facts that we will set before Your Honor disprove the
25 government's claim that he is either a risk of flight or a

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2 danger to the community. First of all, a little bit of
3 background, my client is 44 years old, he was born in the
4 United States, an American citizen, of course, he has never
5 been arrested in 44 years. When he was arrested this
6 morning, or yesterday morning, actually before he was
7 arrested, the FBI took two guns that he has licenses for,
8 he also has a shotgun which he still has in his home and we
9 would, of course, be willing to surrender that promptly,
10 Your Honor. In addition to the lack of criminal record,
11 Your Honor, he is married, his wife is in the courtroom, he
12 has three children, three sons, they are in the courtroom,
13 two of his sons are married. One married son lives in
14 Lakewood, New Jersey, which is part of the metropolitan
15 area, another son is married and lives in Brooklyn, the
16 third son is a teenager, he's 15 going on 16, he lives with
17 his mother and my client in their home in Rockland County,
18 Pomona, New York. This is a home that they purchased less
19 than a year ago, in August of last year. Your Honor, we
20 would be more than willing to post that property as part of
21 the bail package. He also has ten brothers and sisters, my
22 client is one of eleven children, all of his brothers and
23 sisters live in the New York City metropolitan area, all of
24 them live in the State of New York. His parents are
25 elderly but they live, they are, thank God, alive and live

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2 in Brooklyn. My client has no ties outside of the United
3 States, no family outside of the United States, he has not
4 traveled outside of the United States in at least five
5 years and at that time he made a trip to Israel for
6 religious purposes.

7 In addition, my client has been very active in the
8 orthodox community, particularly in Brooklyn, because until
9 August of last year, he resided for his whole life in
10 Brooklyn. He's active with a large number of community
11 organizations, both as a fund raiser and fund contributor.
12 As Your Honor can readily say by the people in the
13 courtroom, there are a very large number of people here,
14 many are family, the balance are friends. They are here to
15 show Your Honor visibly that my client has very strong ties
16 to the New York community. These people are here because
17 they know my client, they received assistance from my
18 client, they are friendly and co-worshippers with my client.
19 In addition, among the people here is an individual by the
20 name of Jacob Rosenberg. Mr. Rosenberg knows my client
21 because they went to grade school, yeshiva, together. Mr.
22 Rosenberg is a member of a family business in Brooklyn, in
23 Williamsburg, a lumberyard which is actually owned by Mr.
24 Rosenberg's father. Mr. Rosenberg is a manager of that
25 business. Mr. Rosenberg owns a house on East 4th Street in

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2 Brooklyn. That house is worth approximately \$1.5 million,
3 possibly more. There is a mortgage of a approximately
4 \$600,000 on that property, meaning the equity is somewhere
5 probably in excess of \$900,000. Mr. Rosenberg has for his
6 whole life essentially had strong ties to my client, has no
7 concern whatsoever about my client fleeing the
8 jurisdiction, and is willing to post his property as
9 security as part of a bail package. So we are offering the
10 Court that property as well as my client's property.
11 They're both residences of the sureties, Your Honor, which,
12 of course, carries tremendous persuasive meaning.

13 In addition, in terms of danger to the community,
14 my client's never been arrested, he's never been accused of
15 any crime, certainly not of any violent crime, he poses no
16 risk of danger to the community. He's had two licensed guns
17 and a shotgun, there is no indication and we would add
18 there is no evidence and could be no evidence that my
19 client has ever used those weapons improperly, never mind
20 unlawfully. He has no risk to the community. Certainly,
21 just the mere pendency of these charges would prohibit my
22 client for becoming involved in any attempt to obtain a
23 license on behalf of himself or anyone from the police
24 department, and, of course, we would agree to certify to
25 the Court that he would make no such efforts, whatsoever,

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going forward.

So what the government is essentially saying, that my client was, past tense, was a risk because he facilitated licenses for some people and maybe some of them, and they only point to one, would not have otherwise gotten a license, maybe. My client has, therefore, no risk of danger to the community, he's not going to injure anyone, he's not going to hurt anyone, he's a family man and a community minded man that's charged with bribery. He has no risk of flight, his whole family is here, all his friends are here, his entire life is here. He looks forward to celebrating the upcoming religious holiday of Passover with his friends and relatives in his home, and that's what we'd ask the Court to allow him to do.

If Your Honor wants some additional security in terms of conditions, we'd be more than willing to agree to additional conditions of security. But in all candor, I most respectfully submit the bail package of a house worth equity, approximately \$900,000, and my client's own home worth in excess of \$150,000, as much as \$200,000 or more, in other words, a million dollar package in residential property is certainly sufficient given the nature of who my client really is, Your Honor.

THE COURT: All right. Does the government want a

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brief response?

MR. NAWADAY: No, Your Honor.

THE COURT: Okay. This is not -- this is not a presumption case, there are certain offenses that carry a presumption that detention is the appropriate resolution of the bail issue, this is not one of them. The government seeks detention on two grounds, dangerousness and risk of nonadherence. The case law provides that to detain an individual on the grounds of dangerousness, the dangerousness needs to be shown by clear and convincing evidence, and I don't think dangerousness has been shown here. The proliferation of firearms in general is regarded by some as dangerous, there are political ramifications that I really don't want to get involved in. but there is no evidence here that either Mr. Lichtenstein has used a firearm for any improper or illegal purpose, nor is there any evidence at this point that any of the individuals that Mr. Lichtenstein allegedly helped get licenses used a firearm for any improper purpose. So I don't think -- I think the government's characterization of him as an arms dealer is somewhat hyperbolic and I don't think that, certainly dangerousness has not been shown by clear and convincing evidence.

With respect to the risk of nonappearance, I also

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2 think that there are bail conditions that can be set to
3 mitigate the risk of nonappearance. Mr. Finkel makes a
4 number of good points that Mr. Lichtenstein has no criminal
5 record, he is born in New York City, he's a lifelong
6 resident of the metropolitan area, he has one trip overseas
7 approximately five years ago. He has extremely substantial
8 family ties to the community, his parents and ten siblings,
9 and it also appears he has ties to the community beyond his
10 immediate family. The risk of nonappearance I think is not
11 so great -- let me rephrase that. In every case there is
12 some risk of nonappearance, but in this case I don't think
13 the risk of nonappearance is so great that there are no
14 bail conditions that could be set that would reasonably
15 mitigate that risk.

16 All right, I'm going to set bail as follows, a
17 \$500,000 personal recognizance bond secured -- Mr. Finkel,
18 Mr. Rosenberg is willing to cosign the bond and put up his
19 house?

20 MR. FINKEL: Yes, and he's in the courtroom now
21 and we can accomplish that this afternoon, Your Honor.

22 THE COURT: All right. I'm going to direct that a
23 \$500,000 personal recognizance bond cosigned by Mr. Jacob
24 Rosenberg and what are the names of the two married sons?

25 MR. FINKEL: The two married sons, the names?

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THE COURT: Yes.

MR. FINKEL: Kevin and Jacob, Your Honor.

THE COURT: Okay. So it's going to be cosigned by Jacob Rosenberg, Kevin, I'm sorry the second son?

MR. FINKEL: Kevin and Jacob, Your Honor.

THE COURT: Kevin and Jacob Lichtenstein. And secured by defendant's residence and Mr. Rosenberg's residence. Travel limited to the Southern and Eastern Districts of New York.

MR. FINKEL: I'm sorry?

THE COURT: Travel limited to the Southern and Eastern Districts of New York, that's about halfway up to Albany and all of Long Island and Staten Island, Brooklyn, Queens. Surrender of all travel documents, no new applications. Regular Pretrial supervision. Surrender of all firearms, including the shotguns -- shotgun, I guess. Defendant to refrain from excessive use of alcohol. Defendant not to possess any firearms. Mr. Nawaday, I think there was some condition you were requesting about contact with certain individuals, just can you repeat what that request was?

MR. NAWADAY: To refrain from contact with personnel of the NYPD firearms division, as well as the persons who the defendant has facilitated the issuance of

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firearms licenses for --

THE COURT: Presumptively he hasn't facilitated anybody in getting a license. Isn't there a presumption of innocence?

MR. NAWADAY: To (inaudible).

THE COURT: With whom?

MR. NAWADAY: With anyone who approaches him to seek a firearms license, Your Honor, or anybody who has previously approached him to receive, his assistance to receive firearms licenses.

THE COURT: I'm going just defendant not to have contact with the NYPD licensing division. An order that says not to have contact with you know who I don't think is enforceable. All right. So the bail conditions are \$500,000 PRB cosigned by Jacob Rosenberg and Kevin and Jacob Lichtenstein and secured by the defendant's residence and Mr. Rosenberg's residence. Travel restricted to the Southern and Eastern Districts of New York, surrender of all travel documents and no new applications. Regular Pretrial supervision. Defendant to surrender all firearms, to refrain from the excessive use of alcohol. Defendant not to possess any firearms and defendant not to have any contact with the NYPD licensing division. The defendant can be released when defendant and cosigners execute the bond.

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They're all in court, Mr. Finkel?

MR. FINKEL: Yes, they are.

THE COURT: Okay. All right, the remaining conditions to be met, the property to be posted by a week from today which is going to be the 25th. All right, Mr. Lichtenstein, I've set bail for you and you're going to be released this afternoon, you're going to go home this afternoon. I want to advise you that if you fail to appear in court whenever you're required to or if you violate any other condition of your release, you and your cosigners will owe the government \$500,000, there will be a lien on your property and Mr. Rosenberg's property, a warrant will issue for your arrest and you could be charged with the offense of bail jumping. You could be separately prosecuted and separately sentenced for bail jumping even if the conspiracy and bribery charges against you were dismissed. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Okay. Mr. Finkel, you wanted to say something?

MR. FINKEL: Yes, one additional request, can you add to the travel restrictions New Jersey so he can visit his son and daughter-in-law in Lakewood, New Jersey, Your Honor?

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THE COURT: Yes.

MR. FINKEL: Thank you.

THE COURT: All right, so the travel limits are the Southern and Eastern Districts of New York and the District of New Jersey which is the entire state. Is there anything else, Mr. Finkel?

MR. FINKEL: Thank you very much, no, Your Honor.

THE COURT: Okay. Preliminary hearing date 21 or 30 days? Mr. Finkel?

MR. FINKEL: I'm sorry, when was that?

THE COURT: The preliminary hearing date which in this district really just operates as a control date, 21 days or 30 days?

MR. FINKEL: We'll take 21, Your Honor.

THE COURT: Twenty-one, so that's going to be May 9th. Okay, anything else from either side?

MR. NAWADAY: Not from the government.

THE COURT: Mr. Finkel, anything else?

MR. FINKEL: That's it, thank you, Your Honor.

THE COURT: Thank you.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, United States of America v. Alex Lichtenstein, Docket #16mj2541, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature_____

Date: April 29, 2016